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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

BYUNG H. KWON,

Plaintiff and Appellant,

v.

INFINITY INSURANCE COMPANY,

Defendant and Respondent.

E068316

(Super.Ct.No. RIC1608183)

OPINION

APPEAL from the Superior Court of Riverside County. Gloria Trask, Judge.

Affirmed.

Byung H. Kwon, in pro. per., for Plaintiff and Appellant.

Schilleci & Tortorici and Jason P. Tortorici for Defendant and Respondent.

In a first amended complaint (FAC), plaintiff and appellant Byung H. Kwon (Kwon) brought 14 causes of action against defendant and respondent Infinity Insurance Company (Infinity). The trial court sustained Infinity's demurrer to the FAC, and, in part, denied leave to amend. In a third amended complaint (TAC), Kwon brought seven

causes of action against Infinity. The trial court sustained Infinity's demurrer to the TAC without leave to amend.

Kwon raises two issues on appeal. First, Kwon contends the trial court erred by sustaining the demurrer to the FAC, in part without leave to amend, because Kwon was a third-party beneficiary of Infinity's insurance contract with another driver. Second, Kwon asserts the trial court erred by denying him leave to amend. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. FAC

On July 1, 2014, Kwon was involved in an automobile accident in Riverside. Another driver (Driver) involved in the accident was insured by Infinity. Driver caused the accident by proceeding through an intersection against a red light. As a result of the accident, (1) Kwon incurred an emergency room bill of \$96,547; (2) Kwon was unable to assist his company during an arbitration; and (3) Kwon was unable to care for his paraplegic wife. Infinity informed Kwon that Driver was not at fault, and, therefore, Infinity did not disclose information about Driver's policy limits to Kwon. Kwon sought compensatory and punitive damages.

The 14 causes of action listed in the caption of the FAC included: (1) fraud; (2) bad faith; (3) punitive damages; (4) failure to accept a reasonable settlement; (5) violation of insurance statutes; (6) unfair business practices (Bus. & Prof. Code, § 17200); (7) gross negligence; (8) elder abuse; (9) emotional distress; (10) conspiracy and concealment; (11) failure to provide timely notice; (12) negligent interference with

business; (13) failure or delay in providing payment; and (14) declaratory relief. The causes of action are not separately delineated in the body of the FAC.

Kwon attached a variety of documents to the FAC, including a report about the accident by the California Highway Patrol. Driver reported to a California Highway Patrol Officer (the Officer) that she was exiting eastbound Route 91 onto Tyler Street, and making a left turn on a green light when Kwon failed to stop at a red light. Driver was unable to stop in time and struck Kwon's vehicle.

Kwon reported to the Officer that Kwon was stopped at a red light on Tyler Street. When the traffic light turned green, Kwon entered the intersection to make a left turn and his vehicle was struck by Driver, who failed to stop at a red light. The Officer explained that, based upon Kwon's and Driver's statements, the Officer "was unable to determine who caused this traffic collision." The report was dated July 1, 2014. On July 9, 2014, the Officer wrote a supplemental report. The officer explained that s/he spoke with a person who witnessed the traffic collision (Witness). Witness told the Officer that Kwon entered the intersection on a green light.

B. DEMURRER TO THE FAC

Infinity demurred to the FAC. Infinity asserted that Kwon was insured by Geico. Infinity contended Kwon had no relationship with Infinity and could not directly sue Infinity. Further, Infinity contended Kwon failed to allege facts sufficient to state a cause of action. In regard to the allegation that Infinity violated the Insurance Code,

Infinity asserted there was no provision providing for private enforcement of such alleged violations.¹

C. RULING REGARDING THE FAC

At the hearing on Infinity’s demurrer to the FAC, the trial court said, “[T]he demurrer is sustained without leave to amend as to the 2nd, 4th, 5th, 10th, 11th, 13th, and 14th causes of action. The plaintiff lacks standing to sue on these claims, which defenses are incurable. [¶] The demurrer is sustained with 20 days leave to amend as to the 1st, 3rd, 6th, 7th, 8th, 9th, and 12th causes of action. The first amended complaint is incoherent and unintelligible, and plaintiff fails to plead sufficient facts to support these claims.”

D. TAC

In the TAC,² Kwon described the automobile collision. Kwon alleged he had an underinsured motorist provision as part of his Geico policy. Kwon alleged Infinity and Geico were colluding to prevent Kwon from receiving the money owed to him from his Geico policy. Kwon asserted Infinity and Geico were sending one another “secret

¹ On October 5, 2016, Infinity filed a notice of non-opposition to the demurrer. Also on October 5, Kwon filed an opposition to the demurrer. Kwon’s opposition is not included in the record on appeal. On October 14, Infinity filed a reply to Kwon’s opposition. Infinity’s reply is not included in the record on appeal.

² Kwon’s second amended complaint was filed by the trial court clerk’s office; however, Kwon missed the filing deadline. The trial court granted Kwon’s motion for leave to refile the second amended complaint and granted Kwon five days leave to amend. The trial court directed Kwon to label the refiled/amended complaint as a third amended complaint.

correspondence.” Kwon continued to suffer trouble with his brain function, language abilities, and vision.

Kwon’s causes of action included: (1) fraud; (2) punitive damages; (3) unfair business practices (Bus. & Prof. Code, § 17200); (4) gross negligence; (5) elder abuse; (6) emotional distress; and (7) negligent interference with business. Kwon sought compensatory and punitive damages.

Kwon attached various documents to the TAC. An August 1, 2014, letter from Geico to Infinity reflects Geico investigated the automobile collision and determined Driver was at fault; therefore, Geico would not be issuing a payment to Infinity.

A July 6, 2015, letter from Infinity to Geico reflected Infinity had completed its investigation of the accident and found no liability on the part of Driver. Infinity denied Geico’s demand for subrogation. On January 13, 2016, Infinity sent a letter to Geico denying Geico’s claim because Infinity found no liability on the part of Driver.

A May 3, 2016, letter from Geico to Infinity reflects Geico denied Infinity’s subrogation demand. Geico wrote, “We have only paid the medical bills for our insured with regards to this loss. We have no subrogation rights in the state of California the medical payments made on behalf of our insured [*sic*]. Therefore, we are unable to submit the request subrogation demand [*sic*].” A copy of Kwon’s Geico insurance policy from July 2014 reflects he had \$500,000 in coverage for underinsured motorists.

E. DEMURRER TO THE TAC

Infinity demurred to the TAC. Infinity asserted Kwon had no relationship with Infinity and therefore (1) Infinity owed no duty to Kwon, and (2) Kwon could not

provide a legal theory under which Infinity was liable to Kwon. Additionally, Infinity asserted Kwon failed to set forth sufficient facts to state a cause of action.

F. OPPOSITION TO THE DEMURRER TO THE TAC

Kwon opposed Infinity's demurrer to the TAC. Kwon asserted that he should be excused from pleading all the necessary facts because Infinity possessed all the information relevant to the case. Kwon contended he sufficiently pled the seven causes of action. Kwon requested leave to amend the TAC.³

G. RULING REGARDING THE TAC

At the hearing on the demurrer to the TAC, Kwon requested leave to amend. Kwon explained that he was recovering from the accident and would be better able to concentrate and provide "the exact description and elements of the cause of action as much as possible on [his] ability."

The trial court said, "[T]he Court has given you an opportunity to correct your complaint so that it could state proper causes of action. And when you have amended, it hasn't had any significant change. . . . [¶] . . . [W]hat you have presented in the third amended complaint . . . simply is not satisfactory, and it—it's not even close to stating something that could be tried in court.

"Infinity is not responsible. They have no relationship with you. You are not a third party beneficiary of Infinity Insurance, and you don't seem to understand that [¶] . . . [¶] So the causes of action that you have set forth are not sufficient. There is

³ Infinity filed a reply to Kwon's opposition. Infinity's reply is not included in the record on appeal.

no legal duty of Infinity Insurance. There is no fraud. You have not set out any specifics with regard to fraud or misrepresentations of Infinity. You have no relationship with Infinity. Again, with gross negligence, Infinity owes you no duty, and there are—and for elder abuse, there’s no taking of your property. [¶] So it’s not even close, sir, and we can’t—it’s difficult. It is very, very difficult to understand your complaint.” The trial court sustained the demurrer to the TAC without leave to amend.

DISCUSSION

A. STANDARD OF REVIEW

“In reviewing an order sustaining a demurrer, we examine the operative complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory.” (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162.)

B. TAC

As the trial court stated, Kwon’s TAC is difficult to decipher. In reading and rereading the TAC, it appears to this court that the gravamen of Kwon’s TAC is that Infinity refuses to disclose Driver’s policy limits. Kwon wants to collect on the \$500,000 underinsured motorist provision through his Geico insurance policy, but he cannot do that until he has information about Driver’s Infinity insurance policy.

An insurance company cannot disclose an insured’s policy limits to a third-party claimant without first obtaining the insured’s consent for the disclosure. (Ins. Code, § 791.13, subd. (a); *Boicourt v. Amex Assurance Co.* (2000) 78 Cal.App.4th 1390, 1397.) However, policy limits are discoverable, after filing a lawsuit, through both

interrogatories and requests for production. (*Griffith v. State Farm Mut. Auto Ins. Co.* (1991) 230 Cal.App.3d 59, 64; *Irvington-Moore, Inc. v. Superior Court* (1993) 14 Cal.App.4th 733, 739, 743-744.)

Thus, it appears from this record, that Kwon could have obtained the policy limit information by filing a personal injury lawsuit seeking to establish Driver's liability for the collision. Within the discovery process for such a lawsuit, Kwon could have requested information concerning Driver's policy limits. (*Griffith v. State Farm Mut. Auto Ins. Co.*, *supra*, 230 Cal.App.3d at p. 64.) With that possibility as background information, we examine the TAC.

C. THIRD-PARTY BENEFICIARY

Kwon contends the trial court erred by finding he is not a third-party beneficiary of Driver's insurance policy with Infinity.

"As a general rule, absent an assignment of rights or a final judgment, a third party claimant may not bring a direct action against an insurance company on the contract because the insurer's duties flow to the insured. [Citations.] There are several exceptions to the general rule which prohibits a third party claimant from suing an insurer. For example, . . . a claimant may sue the insurer as a third party beneficiary utilizing traditional contract principles." (*Harper v. Wausau Ins. Co.* (1997) 56 Cal.App.4th 1079, 1086-1087.)

Kwon's theory that he is a third-party beneficiary of Driver's insurance policy and thus entitled to information concerning Driver's policy limits is problematic due to the statute that prohibits prelitigation disclosure of policy information absent the

insured's consent. (Ins. Code, § 791.13, subd. (a); *Boicourt v. Amex Assurance Co.*, *supra*, 78 Cal.App.4th at p. 1397.) In other words, Kwon is suing Infinity for failing to disclose information that, per statute, it could not disclose prior to being sued.⁴

Therefore, we conclude the trial court did not err by sustaining the demurrer without leave to amend because Infinity cannot be faulted for not disclosing Driver's policy limits prelitigation.

D. AMENDMENT

Kwon contends the trial court erred by denying him leave to amend.

“ ‘Where the complaint is defective, “[i]n the furtherance of justice great liberality should be exercised in permitting a plaintiff to amend his complaint, and it ordinarily constitutes an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility that the defect can be cured by amendment.” ’ ” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 970-971.)

“When the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint . . . and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly.” (Code Civ. Proc., § 474.)

As set forth *ante*, Kwon likely could have obtained Driver's policy limit information by bringing a personal injury lawsuit to establish Driver's liability for the collision. Kwon included Does among the defendants in his FAC and TAC. In the

⁴ We are assuming, from the fact that Kwon is suing Infinity, that Driver did not consent to the disclosure of her policy limits.

FAC and TAC, Kwon gave Driver's name when alleging the facts of the case. Driver's name is also included in the police report attached to the FAC. Thus, Kwon was not ignorant of Driver's name at the time of filing the FAC and TAC. Therefore, Kwon cannot use a Doe amendment to fix his complaint. (Code Civ. Proc., § 474.)

“[A] complaint may not be amended to add a new defendant after the statute of limitations has run.” (*McGee Street Productions v. Workers' Comp. Appeals Bd.* (2003) 108 Cal.App.4th 717, 724.) The statute of limitations for personal injury cases is two years. (Code Civ. Proc., § 335.1.) The collision at issue in this case is alleged to have occurred on July 1, 2014. The trial court ruled on the demurrer to the FAC in October 2016. The trial court ruled on the demurrer to the TAC in February 2017. Thus, when the trial court ruled on the demurrers to the FAC and TAC, the statute of limitations had run, and Kwon could not amend the complaints to add Driver as a defendant.

Therefore, the trial court did not abuse its discretion by denying Kwon leave to amend the FAC and TAC.⁵

⁵ On the court's own motion, we take judicial notice of the record in the related appellate case of *Kwon v. Geico General Insurance Co.* (E068613). (Evid. Code, § 452, subd. (d).) The record in *Kwon v. Geico*, includes information about a third trial court case, *Kwon v. Zaia* (Riverside County Super. Ct., case No. RIC1606766), which is Kwon's personal injury lawsuit against Driver. The record in *Kwon v. Geico* also includes the limits of Driver's insurance policy with Geico.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

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MILLER

J.

We concur:

McKINSTER

Acting P. J.

RAPHAEL

J.